IN THE

Supreme Court of the United States

MISSOURI & ARKANSAS LUMBER & MINING COMPANY,
Plaintiff in Error,

v.

GREENWOOD DISTRICT OF SEBASTIAN COUNTY, ARKANSAS, CLAUDE THOMPSON AS SHERIFF, AND MARSHALL STROZIER AS TREASURER,
Defendants in Error.

No. 990

REPLY TO BRIEF AND ARGUMENT OF DEFENDANTS IN ERROR.

I.

Counsel for defendants in error, states the case very fairly from his standpoint, but fails to distinguish between a case wherein judgment is rendered for interest, leaving the court and officers enforcing it to look outside of the judgment in order to determine the interest, from a judgment

rendered wherein it is adjudged that the plaintiff have and recover a definite amount *"with interest at the rate of six per cent per annum from this date until paid."* He has not been able to cite a case in which a judgment of this character has had the interest legislated out of the judgment.

The case of *Read v. Mississippi Co.*, which he cites, was a judgment in which the statute had to be consulted to determine the rate of interest. This case was based upon the case of *Morley v. Lake Shore Ry.*, from which it appears in a vigorous dissenting opinion of four of the judges, that the judgment did not specify the rate of interest (146 U. S. 175). The Morley case followed the case of *Prouty v. Michigan Southern and Northern Indiana Ry. Co.*, which was decided upon the authority of the case of *O'Brien v. Young*, in which it was expressly stated that a different rule would apply if the judgment specified the sum or rate. In none of these cases, was the rate stated in the judgment. The quotation from the Read case, that where the instrument sued on did not bear interest, that the judgment bore interest by operation of law, is correct where there is no mention of interest in the judgment, but at the time the judgment was rendered the law of the state as shown by the authorities already quoted required that interest should be paid on the judgment, notwithstanding the scrip did not bear interest. Were this question open to inquiry now, the judgment was right.

The county had issued its negotiable paper in payment of its debts, and the judgment bore interest notwithstanding the scrip did not.

"All contracts for the payment of money bear interest from the time they are payable."

Powhattan Zinc & Lead Co. v. Hill, 98 Ark. 519-520.

If a decree is given for costs, the costs become a part of the decree and bear interest the same as the amount for which the decree is rendered.

State ex rel Chicot County v. Desha County, 82 Ark. 360.

The provision of the constitution that no interest bearing evidence of indebtedness shall be issued, does not forbid a contract to pay interest after maturity.

Lackey v. Fayetteville, 80 Ark. 108-128.

Interest in the present case was prayed in the complaint, was not traversed, was adjudged, and no exceptions were saved.

(46 Ark. 87-95, already cited);
Harshman v. Knox County, 122 U. S. 306.

II.

It is argued that the Morley case and Read case hold that there is no vested right in the

judgment, and that this court should follow the state court's decision in the interpretation of the state statute. No sum or rate of interest being named in those cases, and it being left to legislation to determine what interest should be paid, makes quite a different case from the present one.

The state having passed a statute that is in conflict with the federal constitution, the rulings of the state courts have no binding effect upon this court.

McCullough v. Virginia, 172 U. S. 102;
Seton Hall College v. South Orange, 242 U. S. 100;
Detroit United Ry. Co. v. Michigan, 242 U. S. 238.

To hold that a department of the state government may make purchases, issue its commercial paper in payment when its laws, and the court's construction of them at the time authorize a judgment and interest thereon until paid, and after a judgment has been rendered in the United States court, in accordance with its laws, to allow its legislature to legislate the value out of the judgment, so that it can be paid off without paying at any one time as much as the interest due, is to hold that a state may set a trap for corporations or citizens.

Citizens Bank v. Omaha, 173 U. S. 636-657.

III.

It is argued that as the county could not issue interest-bearing evidence of indebtedness, therefore a judgment calling for interest after maturity is a nullity as to the interest. Such is not the interpretation of the law by the state court.

Lackey v. Fayetteville, supra;
Nevada County v. Hicks, supra.

We are not claiming a vested right under a general law or a special law as argued, and we do not have to go outside of the record to ascertain our rights. But we are claiming it under a solemn adjudication of the United States court, and if any additional authorities are necessary we would cite the following:

A judgment based on a contract is an obligation that cannot be impaired.

Hicks v. Cleveland, 106 Fed. 459-462-464.

A judgment is a contract when founded on a contract.

Blunt v. Windley, 95 U. S. 173-176.

"What is a judgment but a security of record showing a debt due from one person to another?"

Provident Savings Society v. Ford, 114 U. S. 635-641.

It is binding whether right or wrong.

Wilson's Exr. v. Dean, 121 U. S. 525-534.

Judgments of the United States courts are binding on all the world, even though jurisdiction may not be shown in the pleadings, and if erroneous will bind the parties until set aside.

Dowell v. Applegate, 152 U. S. 327-339.

"The maintainance of public order, the repose of society, and the quiet of families, require that what has been definitely determined by competent tribunals shall be accepted as irrefragable legal truth. So deeply is this principle implanted in her jurisprudence, that commentators upon it have said, the *res judicata* renders white that which was black, and straight that which was crooked."

Jeter v. Hewitt, 22 How. 364;
See *Cocke v. Halsey,* 16 Pet. 71-87;
Stout v. Lye, 103 U. S. 66-68.

VESTED RIGHTS.

When these county warrants were issued and the judgment was entered, the laws of the state allowed interest from the date of the judgment until paid, and the right to this having vested by judgment, the legislature could not legislate this out of the judgment.

Koshkonong v. Burton, 104 U. S. 668-677.

"But it is urged, that the act of congress cannot have the effect and operation to annul the judgment of the court already rendered, or the rights determined thereby in favor of the plaintiff. This as a general proposition, is certainly not to be denied, especially as it respects adjudication upon the private rights of parties. When they have passed into judgment the right becomes absolute, and it is the duty of the court to enforce it."

Pennsylvania v. Wheeling Bridge Co., 18 How. 431.

Rights vested, when fixed by law in force at the time cannot be divested by subsequent legislation.

Etter v. Tacoma, 228 U. S. 148-156.

Not only had the judgment been rendered for interest until paid, but it had been revived *in toto*, and the recitals of the judgment cannot be attacked. Additional authority:

Dickson v. Wilkinson Adm'r., 3 How. 57.

This is a *proceeding for mandamus* and in a proceeding to enforce payment by mandamus you cannot attack the record for the reason that interest was improperly allowed. The judgment can only be impeached by direct proceedings.

Supervisors v. U. S., 4 Wall 435-444.

When the record is silent the bonds upon which the judgment was rendered may be given in

evidence. But when the record speaks the contract is merged in the judgment the bonds cannot be given in evidence, the record is conclusive and cannot be called in question in a mandamus proceeding.

Harshman v. Knox County, 122 U. S. 306-317-19;

See *First National Bank v. Society of Savings,* 80 Fed. 581-583;

Mayor of Halena v. United States, 104 Fed. 113;

Hicks v. Cleveland, 106 Fed. 459-462.

It certainly would be without precedent, and very unfortunate to say, that when the rights of the parties are ascertained by language that cannot be misunderstood, in a final judgment of the federal court, a state legislature could deprive the parties of their rights so ascertained when even the courts could not do so.

It is respectfully submitted that the judgment of the lower court should be reversed.

JOHN H. VAUGHAN AND
B. R. DAVIDSON,
Attorneys for Plaintiff in Error.

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In the Supreme Court of the United States

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vs.

GREENWOOD DISTRICT OF SEBASTIAN COUNTY, ARKANSAS, Claude Thompson, as Sheriff, and Marshall Strozier, as Treasurer, DEFENDANTS IN ERROR.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR

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CALVERT-HARRIDGE PRINTING CO., FT. SMITH, ARK.

INDEX

	Pages
Statement	2— 4
Power of the Legislature over the question of interest	2— 8
Act of the Legislature not in violation of Sec. 1, Art. 14 of the Constitution of the United States	9—13
Warrants could not under the Constitution of the State of Arkansas bear interest	14—18
No vested right to interest under the statute	19—20
Judgment not conclusive of right as to interest	21—22

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Esholeron v. Noven, 89 Ohio, 48.
Hall v. House, 154 N. Y., 96.
Morley v. Lake Shore etc. Railway Co., 146 U. S., 162.
O'Brien v. Young, 95 N. Y., 428.
Pristy v. Pridgeon, 70 U. S., 322.
Read v. Mississippi County, 69 Ark., 365.
South Ottawa v. Perkins, 94 U. S., 154.
Stanford v. Coram, 28 Mont., 288.
Sanders v. Ry., 94 N. Y., 641.
Steers v. Kinsey, 68 Ark., 368.
Tinney v. Evans, 92 Nebr., 330.
Wyoming National Bank v. Brown, 7 Wyo., 502.

Ruling Case Law Vol 15, Sec. 12.
Ruling Case Law Vol. 6, Sec. 350.
23 Cyc., 1462.
Sec. 1, Art. XVI, Const. Ark.

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BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR

I.

It is admitted that the judgment in favor of plaintiff in error for the sum of $13,703.29 rendered on January 26, 1891, in the United States District Court for the Western District of Arkansas, has been fully paid together with interest at the

rate of six per cent per annum up to and including the 21st day of March, 1893, therefore the only question involved in this case is as to whether or not the judgment continued to bear interest after March 21, 1893, on which date the Act of the Legislature of the State of Arkansas was approved; the Act is as follows:

> "Creditors shall be allowed to receive interest at the rate of six per cent per annum on any judgment before any court or magistrate authorized to enter up the same, from the day of signing judgment until the effects are sold or satisfaction be made; provided, no judgment rendered or to be rendered against any court in the State on county warrants or other evidence of county indebtedness shall bear any interest after the passage of this Act.
>
> "Judgments or decrees upon contracts bearing more than six per cent interest shall bear the same interest as may be specified in such contracts and the date of interest shall be expressed in such judgments and decrees and all other judgments and decrees shall bear interest at the rate of six per cent per annum until satisfaction is made; pro-

vided, no judgment rendered or to be rendered against any county in the state on county warrants or other evidences of county indebtedness shall bear any interest after the passage of this act."

Counsel for plaintiff in error correctly states the question involved in this case in the form of a query, on page 34 of his brief, as follows:

> "There is but one question involved in this case: When a judgment is rendered in the Federal Court against a county, in which it is adjudged that the plaintiff have and recover of and from the defendant $13,703.29, 'With interest at the rate of six per cent per annum from this date until paid' can the legislature of a state thereafter legislate out of the judgment that part which requires the payment of interest and allow the debtor to make payments for more than twenty years, and extinguish the judgment without payment of any interest subsequent to the act?"

This query has been fully answered in the affirmative by the Supreme Court of Arkansas in the case of Read v. Mississippi County, 69 Ark., 365, in which the identical question involved in this case was before the court, and the court held:

"By act approved the 21st day of March, 1893, it is provided, That no judgment rendered or to be rendered against any county in the state, on county warrants, or other evidences of county indebtedness, shall bear any interest after the passage of this act." Sections 5082, 5083, Sandels & Hill's Digest. The appellant thinks this act violates Sec. 17 of Art. 2, of the constitution, which provides that no ex post facto law, or law impairing the obligation of contracts shall ever be passed, and the portion of Sec. 8, Art. 2, of the constitution which povides that no person 'shall be deprived of life, liberty or property without due process of law.' These provisions are also contained in the constitution of the United States. In the case of Morley v. Lake Shore etc. Railway Company, 146 U. S., 162, is to be found a case in point. It is as follows: 'The Court of Appeals of the State of New York having held that a judgment obtained before the passage of the act of the legislature of that state of June 20, 1879, reducing the rate of interest (Sess. Laws 1879, c. 538), is not a contract or obligation excepted from its operation under the provision of No. 1, this court ac-

cepts that construction as binding here.'

"The provision in Sec. 10, of Art. 1, of the constitution of the United States that no state shall pass 'any law impairing the obligation of contracts' does not forbid a state from legislating, within its discretion, to reduce the rate of interest upon judgments previously obtained in its courts; as the judgment creditor has no contract whatever in that respect with the judgment debtor, and as the former's right to receive, and the latter's obligation to pay, exists only as to such amount of interest as the states chooses to prescribe as a penalty or liquidated damages for the non-payment of the judgment."

"A state statute reducing the rate of interest upon all judgments within the courts of the state does not, when applied to one obtained previous to its passage, deprive the judgment creditor of his property without due process of law, in violation of the provision of Sec. 1 of the Fourteenth amendment to the constitution of the United States." This decision is satisfactory to us and fully answers the appellant's contentions."

In the case decided by this court referred to in the opinion in the above case of Morley vs. Lake Shore etc. Railway Company, this court in passing upon the question "The right of a legislature of a state to reduce the rate of interest" stated:

> "A large portion of the able argument in behalf of the plaintiff in error was directed to a discussion of the question how far the legislature may change remedies on existing contracts, without impairing their obligation in the constitutional sense, and our special attention was asked to the case of Gunn v. Barry, 82 U. S. Wall. 610 (21 : 212). That was a case wherein this court held that, as respects a creditor who had obtained by his judgment a lien on the land which a former exemption secured to him while the new one destroyed it, the law creating the new exemption impaired the obligation of a contract, and was unconstitutional and void. The doctrine of that and similar cases does not seem to be applicable to the present case. Much discussion has been had in many cases, in this and other courts, in the attempt to fix definitely the line between the alterations of the remedy whch are deemed legitimate, and those

which, under the form of modifying the remedy, impair substantial rights. But if we are right in our view of the nature of the present case, we are not called upon to review or consider those cases. If it be true, as we have endeavored to show, that interest allowed for non-payment of judgments is in the nature of statutory damages, and if the plaintiff in the present case has received all such damages which accrued while his judgment remained unpaid, there is no change or withdrawal of remedy. His right was to collect such damages as the State, in its discretion, provided should be paid by defendants who should fail to promptly pay judgment whch should be entered against them, and such right has not been destroyed or interfered with by legislation. The discretion exercised by the Legislature in prescribing what, if any, damages shall be paid by way of compensation for delay in the payment of judgments is based on reasons of public policy, and is altogether outside the sphere of private contracts."

These two cases should be absolutely conclusive of the question.

In their brief, counsel for plaintiff in error cites many cases dealing with the question of the impairment of the obligations of contracts, but in the Read case the court held "that interest allowed on a judgment, where not stipulated in the contract sued upon, is not by virtue of a contract, but is by operation of law, and in the nature of a penalty for delay in payment of the principle sum, after it became due." This construction of the statute in question by the highest court of the state of Arkansas is conclusive and binding upon this court. That construction makes it clear that interest on a judgment is not a contract, but is merely a penalty for the nonpayment of the judgment, and is a remedy that the legislature can change at will and make it retroactive. In the Morley vs. Lake Shore case the New York Court of Appeals held that a judgment for interest was not a contract between the parties as contemplated by that portion of the constitution that provides that no laws shall be passed impairing the obligation of contracts, and that construction was held by this court to be binding upon it.

II.

ACT DOES NOT VIOLATE DUE PROCESS CLAUSE, SECTION ONE, ARTICLE FOURTEEN, OF THE CONSTITUTION OF THE UNITED STATES.

It is contended by counsel for plaintiff in error that the right to interest on the judgment was vested and therefore could not be abrogated by the Act of the Legislature; that contenton was fully answered by this court in the Morley case, the court holding:

> "The further contention of the plaintiff in error, that he has been deprived of his property without due process of law, can be more readily disposed of. If, as we have seen, the plaintiff has actually received on account of his judgment all that he is entitled to receive, he can not be said to have been deprived of his property; and whether or not a statutory change in the rate of interest thereafter to accrue on the judgment can be regarded as a deprivation of property, the adjudication of the plaintiff's claims by the courts of his own state must be admitted to be due process of law. Nor are we authorized by the Judiciary Act to re-

> view this judgment of the state court, because this judgment refuses to give effect to a valid contract, or because such judgment in its effect impairs the obligation of contract. If we did, every case decided in the state courts could be brought here, when the party setting up a contract alleged that the court took a different view of its obligation from that which he had." Citing: Knox vs. Exchange Bank of Va., 79 U. S., 12 Wall 379, 383.

Under this decision the contention of the plaintiff in error that it has been deprived of its property without due process of law must fail. The question of the right to interest where the contract upon which the judgment was based did not provide for interest was also fully discussed and decided in the Morley case, the court stating:

> "After the cause of action, whether a tort or a broken contract, not itself prescribing interest till payment, shall have been merged into a judgment, whether interest shall accrue upon the judgment is a matter not of contract between the parties, but of legislative discretion, which is free, so far as the constitution of the United States is concerned, to provide for interest as a penalty or liquidated dam-

ages for the nonpayment of the judgment, or not to do so. When such provision is made by statute the owner of the judgment is of course entitled to the interest so prescribed until payment is received or until the state shall, in the exercise of its discretion, declare that such interest shall be changed or cease to accrue. Should the statutory damages for nonpayment of a judgment be determined by a state, either in whole or in part, the owner of a judgment will be entitled to receive and have a vested right in the damages which shall have accrued up to the date of the legislative change; but after that time his rights as to interest as damages are, as when he first obtained his judgment, just what the legislature chooses to declare. He has no contract whatever on the subject with the defendant in the judgment, and his right is to receive and the defendant's obligation is to pay, as damages, just what the state chooses to prescribe."

The principle stated by the court applies with equal force regardless of whether or not the judgment on its face provided for interest. Counsel for plaintiff in error contends that the Morley

case and Read case are not decisive of the question involved because in those cases no interest was mentioned in the judgment, while in the case at bar interest was mentioned in the judgment. That reasoning is not sound, nor is it in conformity with the law. The Read case decided by the Supreme Court of Arkansas is absolutely conclusive, as it was held in the Morley case and in others, that this court will be controlled by the construction given a state statute by the highest tribunal of that State. The Read case fully construed this statute and there is no later decision in which such construction has been overruled or modified, and the Court held that it made no difference whether interest was mentioned in the judgment or not, that before the passage of the act all judgments bore interest at the rate of six per cent.

In the case of Pristy vs. Pridgeon, 70 U. S., 322, this court held:

> "The interpretation, therefore, placed upon it by the highest court of the state must, according to the established principles of this court, be accepted as the true interpretation, so far as it applies to titles to land in that state, whatever may be our opinion of its original soundness. * * * The interpretation within the jurisdiction of one state becomes a part of the

law of that state, as much so as if incorporated into the body of it by the legislature. If, therefore, different interpretations are given in different states to a similar local law, that law in effect becomes by the interpretations, so far as it's a rule for our action, a different law in one state from what it is in the other. 'That the statute laws of the state,' says Mr. Justice Johnson, in delivering the opinion of this court in Shelby vs. Guy, 11 Wheat., 367, 'must furnish the rule of decision of this court, as far as they comport with the Constitution of the United States, in all cases arising within the respective states, is a position that no one doubts. Nor is it questionable that a fixed and received construction of their respective statute laws, in their own courts, makes, in fact, a part of the statute law of the country, however we may doubt the propriety of that construction."

The above doctrine is also upheld in the case of South Ottawa vs. Perkins, Supervisors of Kendall Co. vs. Post, 94 U. S., 154.

III.

WARRANTS UPON WHICH JUDGMENT WAS BASED COULD NOT UNDER THE CONSTITUTION OF THE STATE OF ARKANSAS BEAR INTEREST.

Section 1 of Art. XVI, Constitution of Arkansas, provides:

> "Neither the state nor any city, county, town or other municipality in this state shall ever loan its credit for any purpose whatever; nor shall any county, city, town or municipality ever issue any interest-bearing evidences of indebtedness (1), except such bonds as may be authorized by law to provide for and secure the payment of the present existing indebtedness, and the state shall never issue any interest-bearing treasury warrants or scrip."

The warrants upon which the judgment in this case is based show on their face that they were issued long after the adoption of the constitution of 1874, in which the above provision is embodied, and that the warrants were not issued in payment of any indebtedness existing at or prior to the date of the adoption of the constitution; and, there

could not have been any contract for interest between the holder of these warrants and the County, and the interest mentioned in the judgment was not as a part of the contract but merely as a penalty for the non-payment of the judgment as provided by the statute as it existed at that time. The court could not make the payment of interest a contractual obligation in the face of the above provision of the constitution. It was evidently the purpose and intention of the legislature to prevent by this method a creditor from obtaining interest on an indebtedness against a county; the judgment therefore did not bear interest by virtue of the mere fact that the court in rendering judgment, as in all other cases, provided that the judgment should bear interest, which at the time was authorized by law, but this fact could not and did not create a right in the judgment creditor which the legislature could not divest. The Supreme Court of Montana in the case of Stanford v. Coram, 28 Mont., 288, held as follows:

> "A party is not entitled to interest merely because he has a judgment, but solely because the legislature in its discretion, has said he may charge interest. It is an arbitrary right. Parties appealing to the law can take only what the law awards them. It may be true that parties

entering into contracts or appealing to the courts have in mind the fact that any judgment obtained will draw interest at the rate then fixed by the legislature. It is likewise true that they have notice of the inherent power of the legislature to change this rate, or to annul it altogether, and such enactments are not retroactive or retrospective so long as they do not interfere with the collection of interest already accrued. Laws changing the rate of interest apply to accounts with respect to which no agreement exists as to interest.

* * This law now under consideration is a general law. A CITIZEN CAN HAVE NO VESTED RIGHT IN A GENERAL LAW WHICH CAN PRECLUDE ITS AMENDMENT OR REPEAL, AND THERE IS NO IMPLIED PROMISE ON THE PART OF THE STATE TO PROTECT ITS CITIZENS AGAINST INCIDENTAL INJURY OCCASIONED BY CHANGES IN THE LAW." (Cooley's Constitutional Limitations, 6th ed. 343).

And the Supreme Court of Wyoming, in the case of Wyoming Nat. Bank vs. Brown, 7 Wyo. 502, says:

"An act reducing the rate of interest

which judgments shall bear, passed after the rendition of the judgment, is a conclusive determination by the legislature that the damages accruing to the judgment creditor by being deprived of the use of the amount due are measured by a lower rate of interest during the period subsequent to the taking effect of the act than from the rendition of the judgment up to that time. If this view is correct, the plaintiff in this case has received all damages which accrued while its judgment remained unpaid, and none of its rights have been destroyed or interfered with by legislation. The defendant's obligation to pay interest being simply that which the law imposed, they discharged that obligation by paying what the law expected."

And the Supreme Court of Arkansas in the Read case says:

> "The Court in Nevada County vs. Hicks, 50 Ark., 416, held 'that the allowance of interest on a judgment against a county is not a contract by a county to pay interest, and does not violate section 1, Article 16, of the Constitution, which forbids counties to issue any interest bear-

ing evidences of indebtedness.' That a judgment against a county bears interest, whether mentioned in the judgment or not, at the rate of six per cent. per annum, unless the judgment is rendered upon a contract for more than six per cent., when it will bear the rate of interest the contract bore (when it does not exceed 10 per cent. the lawful conventional rate, of course). Interest allowed on a judgment, where not stipulated in the contract sued upon, is not by virtue of a contract, but is by operation of law, and in the nature of a penalty for delay in the payment of the principal, after it becomes due."

The construction placed upon the Act by the Supreme Court of the State of Arkansas will be considered as binding in this court.

This Court, in the case of Barnitz vs. Beverly, 163 U. S., 129, said:

> "Neither is the case of Morley vs. Lake Shore, etc., Ry. Co., 146 U. S., 162, in anywise inconsistent with the cases above cited. The holding there was that the rate or amount which was prescribed by the Statutes of a State, as damages for failure to pay or satisfy an existing judg-

ment was a matter of public policy, and did not arise out of the contract between the creditor and the debtor."

VESTED RIGHT—the Supreme Court of Arkansas in defining "Vested Right" states:

"Now, a vested right must be something more than a mere expectation based upon the anticipated continuance of existing laws. It must have become a title, legal or equitable, to the present or future enjoyment of property, in some way or another. Black, Const. Law, 430; Sutherland, Stat. Const. Sec. 164. But parties have no vested rights in remedies or matters of procedure." Steers v. Kinsey, 68 Ark., 368.

"A vested right is property arising from a contract or from the prnciples of the common law, which cannot be destroyed, divested or impaired by legislation." Boyston v. Miller, 76 Fed., 50.

"There is no vested right that the law shall continue to be unchanged." Hall v. House, 154 N. Y. S. 96; 91 Misc. Rep., 122.

"The theory upon which interest on judgments is allowed is that it is a measure of damages fixed by the legislature; it is not interest in its strict sense;

> nor is it based on any contract express or implied, as a judgment is not a contract save in a very recondite and remote sense of the term. For that reason it has been held that the legislature may change the rate of interest on judgments to have a retroactive effect without impairing any obligation of contract." 15 R. C. L. Sec. 12.

It is also held, that, "A distinction is to be drawn between the right of the legislature, without impairing the obligation of contracts, to reduce the rate of interest payable under contracts and the right to do so with respect to interest on judgments. The general rule is that the rate of interest allowed by law at the time a contract is made is deemed to be a part of such contract and protected from impairment by subsequent legislation. The rate of interest due payable on a judgment stands on a different basis from that due under a contract It is generally recognized that interest allowed for non-payment of judgments is in the nature of statutory damages, and the rule is established that a state without impairing the obligation of contracts may legislate to reduce the rate of interest on judgments previously obtained in its courts." 6 R. C. L. Sec. 350, and authorities cited.

IV.

THE JUDGMENT WAS NOT CONCLUSIVE ON THE QUESTION AND THE RIGHT TO INTEREST WAS NOT RES JUDICATA.

It is contended by counsel for plaintiff in error that the mere fact that the judgment specified that it should draw interest at the rate of six per cent. per annum was conclusive and rendered the plaintiff's right to interest res judicata.

As shown by the record, the pleadings were introduced in evidence and the instructions of the court, for the purpose of proving that while the plaintiff claimed interest in his petition from the date of filing the suit (R-18), yet the court peremptorily instructed the jury as follows: "If you should find that the scrip issued above was issued by the Greenwood District of the County, you will find a verdict for the aggregate amount of such scrip so issued without interest," (R-20), therefore, the only interest mentioned in the judgment is the statutory rate which followed at that time as an incident to the judgment itself, and the defendant was not precluded by the judgment from raising the question as to the plaintiff's right to recover interest on the judgment after the passage of this Act by the legislature.

The several judgments of revivor did not

change the status of the original judgment as far as the question of interest was concerned.

> "Revivor has no other effect than to reinstate judgment and authorize execution to collect the same." Tinney v. Evans, 92 Nebr., 330.
>
> "Order of revivor of judgment invests judgment with all the attributes of a living judgment, subject to conditon of order." Esholeron v. Noven, 89 O. St., 48; 105 N. E., 70; 23 Cye., 1462; O'Brien v. Young, 95 N. Y., 428; Sanders v. Ry., 94 N. Y., 641; Wyoming Nat'l Bank v. Brown, 53 Pac., 291 and 61 Pac., 465.

We respectfully submit that the judgment is correct and should be in all things affirmed.

Respectfully submitted,

THOS. B. PRYOR,
Attorney for Defendant in Error.